

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WAYNE SMITH,

Plaintiff,

v.

MTGLQ INVESTORS, LP,

Defendant.

CIVIL ACTION NO. 19-cv-01888

**DEFENDANT'S RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL**

Defendant, MTGLQ Investors, LP (“MTGLQ”) files this Response in Opposition to Plaintiff’s Motion to Compel (“Response”), and respectfully shows the Court as follows:

I. CASE HISTORY

This matter was filed by Plaintiff Wayne Smith on May 24, 2019. ECF No. 1. MTGLQ was served with a summons and copy of the original complaint on or about June 7, 2019. ECF No. 3. The Court has ordered the parties to confer as required by Fed. R. Civ. P. 26(f) not less than 10 days before the currently scheduled initial pretrial and scheduling conference on July 25, 2019. ECF No. 2. Plaintiff filed his request for production of documents and interrogatories (“Discovery Request”) on June 7, 2019. ECF No. 6. The Discovery Request was received by MTGLQ on or about June 10, 2019.¹ To date, the parties have not conferred as required by Fed. R. Civ. P. 26(f), though not due to a lack of attempting to contact Plaintiff by the undersigned. *See Aff. of Brandon Hakari ¶ 3.*

¹ This information has been obtained from the United States Postal Service’s website using the tracking number obtained from Plaintiff’s Certificate of Service: 7019 0160 0000 9529 0124.

II. ARGUMENTS AND AUTHORITIES

“By its express terms, Rule 26(d) bars discovery until after the parties have conferred about a discovery plan as directed by Rule 26(f).” *Riley v. Walgreen Co.*, No. H-04-2189, 233 F.R.D. 496, 498 (S.D. Tex. 2005); *see* FED. R. CIV. P. 26(d). Even if discovery is served prior to the Rule 26(f) conference, the timeline to respond does not begin until the Rule 26(f) conference occurs. *See Worrell v. Houston Can! Acad.*, 424 Fed. Appx. 330, 337-338 (5th Cir. 2011).

Though Plaintiff served the Discovery Request on MTGLQ on or about June 10, 2019, the parties have not yet held a Rule 26(f) conference. As such, the Discovery Request is premature, and MTGLQ’s obligation to respond has not been triggered.

III. CONCLUSION

Plaintiff’s Motion to Compel is premature as the parties have not held a Rule 26(f) conference, and MTGLQ is not currently under any obligation to respond to Discovery Request. MTGLQ requests that this Court deny Plaintiff’s Motion to Compel and award MTGLQ any other relief to which it may be entitled.

Respectfully Submitted,
MCCARTHY & HOLTHUS, LLP

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CERTIFICATE OF SERVICE

I hereby certify that I submitted the foregoing to the clerk of the United States District Court, Southern District of Texas using the electronic case filing system of the Court, and that I served all counsel of record listed below in accordance with Federal Rule of Civil Procedure 5(b)(2) on July 10, 2019.

via CMRRR

Wayne Smith
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PLAINTIFF PRO SE

/s/ Brandon Hakari
Brandon Hakari